IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

ROMIE D. BISHOP and SHIRLEY A. BISHOP,	)	
Plaintiffs,	)	
v.	)	C.A. No. 02-550-SLR
MARILYN SWEENEY and DONNA MITCHELL,	)	
Defendants.	)	

Romie D. Bishop and Shirley A. Bishop, pro se plaintiffs.

David H. Williams, Esquire of Morris, James, Hitchens & Williams, LLP, Wilmington, Delaware. Counsel for defendants.

MEMORANDUM OPINION

Dated: January 16, 2003
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

On June 17, 2002, pro se plaintiffs Romie D. Bishop and Shirley A. Bishop filed this action against defendants Marilyn Sweeney and Donna Mitchell alleging violations of the Individuals With Disabilities Education Act, 20 U.S.C. § et seq. ("IDEA") and 42 U.S.C. § 1985(3). This court has jurisdiction pursuant to 28 U.S.C. § 1331. Presently before the court is defendants' motion to dismiss (D.I. 3), plaintiffs' motion to amend their complaint and for default judgment (D.I. 5), and defendants' motion to dismiss the amended complaint (D.I. 9). For the reasons that follow the court shall grant defendants' motion to dismiss, grant plaintiffs' motion to amend, deny plaintiffs' motion for default judgment, and grant defendants' motion to dismiss the amended complaint.

II. BACKGROUND

Plaintiffs are the parents of W.E.B., a minor child diagnosed with learning disabilities under the IDEA. W.E.B. receives special education services in the Appoquinimink School District ("the District"). Pursuant to the IDEA and 14 Del. C. § 1320, the District has the responsibility of providing a free, appropriate public education ("FAPE") to students with learning disabilities. Congress enacted the IDEA "'to assure that all children with disabilities have available to them ... a free appropriate public education which emphasizes special education

and related services designed to meet their unique needs.'" Cedar Rapids Cmty. Sch. Dist. v. Garret F., 526 U.S. 66, 68 (1999) (quoting 20 U.S.C. § 1400(c)). The "centerpiece" of the IDEA's education delivery system is the "individualized education program," or "IEP." Honig v. Doe, 484 U.S. 305, 311 (1988).

The IEP, the result of collaborations between parents, educators, and representatives of the school district, "sets out the child's present educational performance, establishes annual and short-term objectives for improvements in that performance, and describes the specially designed instruction and services that will enable the child to meet those objectives." Id. In order to achieve this goal, the IDEA mandates that the IEP be tailored to the unique needs of each child. The IEP requires school districts to initiate and conduct IEP meetings to work jointly with the parents of the child to develop, review, and revise the curriculum of the child. 20 U.S.C. § 1414(d) Typically, the child's IEP team includes the parents, at least one regular and one special education teacher, and an administrator from the school district. 20 U.S.C. § 1414(d)(1)(B). Ultimately, the members of the child's IEP team develops, reviews, and revises the child's IEP.

In their complaint, plaintiffs allege that defendants obstructed the IEP team meeting, violated plaintiffs' "parental rights," and essentially dominated the meeting giving little

regard to plaintiffs' input. In their amended complaint, plaintiffs raise a number of new allegations and causes of action.

III. STANDARD OF REVIEW

In analyzing a motion to dismiss pursuant to Rule 12(b)(6), the court must accept as true all material allegations of the complaint and it must construe the complaint in favor of the plaintiff. See Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc., 140 F.3d 478, 483 (3d Cir. 1998). "A complaint should be dismissed only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could be granted under any set of facts consistent with the allegations of the complaint." Id. Claims may be dismissed pursuant to a Rule 12(b)(6) motion only if the plaintiff cannot demonstrate any set of facts that would entitle him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Where the plaintiff is a pro se litigant, the court has an obligation to construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 520-521 (1972); Gibbs v. Roman, 116 F.3d 83, 86 n.6 (3d Cir. 1997); Urrutia v. Harrisburg County Police Dep't., 91 F.3d 451, 456 (3d Cir. 1996). The moving party has the burden of persuasion. See Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991).

IV. DISCUSSION

A. Defendants' Motion to Dismiss

Defendants first argue that even accepting all the allegations in plaintiffs' complaint as true, plaintiffs are not the real parties in interest and lack standing to sue in their own right for alleged violations of their child's rights under the IDEA. See Collingsgru v. Palmyra Bd. of Educ., 161 F.3d 225 (3d Cir. 1998). Defendants note that the IDEA does not create the same substantive rights in parents as it creates in children for violations of the Act. Id. Thus, while plaintiffs have standing to bring claims under the IDEA on behalf of their son, they do not have standing to sue individually on their own behalf under the IDEA.

Next, defendants argue that even if plaintiffs have properly asserted a claim on behalf of their son alleging a denial of FAPE under the IDEA, they are prohibited from representing the interests of their son pro se in the federal courts of this Circuit. Id. at 230-31. Finally, defendants argue that plaintiffs have failed to substantively plead a claim under § 1985(3) in their complaint. They assert that plaintiffs' complaint contains no factual allegations that defendants' purported deprivation of plaintiffs' rights under the IDEA stemmed from any conspiratorial intent, or was otherwise motivated by discriminatory animus.

In response to these arguments, plaintiffs summarily recite a number of their purported rights under various constitutional and federal law provisions and re-allege a number of factual allegations from the complaint. They do not directly respond to any of defendants' arguments or address the relevant legal issues. In any event, the court concludes that the under the IDEA and Collingsgru, plaintiffs lack standing to bring claims on behalf of themselves for alleged violations of their child's rights under the IDEA. Furthermore, if it could somehow be construed that plaintiffs are alleging claims on behalf of their son, they may not represent him pro se under the laws of this Circuit.[1] Therefore, defendants' motion to dismiss is granted.

B. Plaintiffs' Motion to Amend

Under the Federal Rules of Civil Procedure, a party may amend its pleading once as a matter of course at any time before a responsive pleading is served. Fed. R. Civ. P. 15(a). Defendants do not contest that they have not filed a responsive pleading or that plaintiffs are entitled to amend their complaint. As such, plaintiffs' motion to amend their complaint is granted.

C. Defendants' Motion to Dismiss Plaintiffs' Amended Complaint

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[1]The court notes for the record that a lawsuit is being pursued on behalf of their child under the IDEA. See W.E.B. v. Appoquinimink Sch. Dist., 2002 U.S. Dist. LEXIS 22526 (Nov. 21, 2002).

Plaintiffs' amended complaint (D.I. 5) simply adds a list of their purported rights under a number of constitutional and federal law provisions including the Fourteen and Thirteenth Amendments, 18 U.S.C. § 241, 42 U.S.C. § 1983, 20 U.S.C. § 1400, and 42 U.S.C. § 1988. Plaintiffs fail to allege virtually any new facts, let alone any facts showing that any of these laws are applicable to their case. In sum, even accepting as true the allegations in plaintiffs' complaint and amended complaint, and drawing all reasonable inferences in plaintiffs' favor, no relief can be granted under any of the suggested theories under any set of facts consistent with the complaint. Consequently, plaintiffs' amended complaint shall be dismissed and their motion for default judgment denied as moot.

V. CONCLUSION

For the reasons stated above, the court shall grant defendants' motion to dismiss, grant plaintiffs' motion to amend, deny plaintiffs' motion for default judgment, and grant defendants' motion to dismiss the amended complaint. An appropriate order shall issue.

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v.	)	C.A. No. 02-550-SLR
MARILYN SWEENEY and DONNA MITCHELL,	)	
Defendants.	)	

O R D E R

At Wilmington this 16th day of January, 2003, consistent with the memorandum opinion issued this same day;

IT IS ORDERED that:

1. Defendants' motion to dismiss (D.I. 3) is granted.

2. Plaintiffs' motion to amend their complaint (D.I. 5) is granted.

3. Defendants' motion to dismiss the amended complaint (D.I. 9) is granted.

4. Plaintiffs' motion and for default judgment (D.I. 5) is denied as moot.

Sue L. Robinson
United States District Judge